

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION, et al.,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE, et al.,

Defendant.

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) Civil Action No. 18-cv-00154-DWM
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EXHIBIT E



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

January 9, 2018

MR. JACOB HUTT
c/o BRETT MAX KAUFMAN & EMERSON SYKES
AMERICAN CIVIL LIBERTIES UNION
125 BROAD STREET, 18TH FLOOR
NEW YORK, NY 10004

Civil Action No. 9:18-cv-00154-DWM
FOIPA Request No.: 1401682-000
Subject: All records regarding federal government and
law enforcement cooperation concerning pipeline
protests after President Trump's memorandum
regarding construction of the Keystone XL Pipeline
(January 24, 2017 to Present)

Dear Mr. Hutt:

This is in response to your Freedom of Information Act (FOIA) request.

The FBI can neither confirm nor deny the existence of any records which would tend to disclose the FBI's preparations, strategy, or available resources for responding to a particular event or activity, including potential protests against the Keystone XL Pipeline. Acknowledging the existence or non-existence of specific FBI strategies, level of resources, capabilities or vulnerabilities regarding any unlawful criminal activity connected to potential protests against this Pipeline triggers the risk of circumvention of federal law enforcement efforts. Thus, pursuant to FOIA exemptions (b)(7)(A) and (b)(7)(E) [5 U.S.C. §552 (b)(7)(A) and (b)(7)(E)], the FBI neither confirms nor denies the existence of records disclosing FBI strategy, coordination, or resources that are or are not available to thwart criminal activity related to future protests against the Keystone XL Pipeline.

Moreover, as a federal law enforcement agency, a confirmation by the FBI that it has or does not have responsive records would be tantamount to acknowledging the detection of and existence or nonexistence of credible threats and pending threat assessments, potential investigation(s), and/or prosecutions. Therefore, the FBI neither confirms nor denies the existence of records responsive to your request per FOIA Exemption (b)(7)(A) of 5 U.S.C. § 552.

Finally, FOIA Exemption (b)(7)(E) protects "records or information compiled for law enforcement purposes when disclosure would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." How the FBI detects and applies its investigative resources against a particular allegation, report of criminal activity, or perceived threat is, itself a law enforcement technique or procedure the disclosure of which triggers circumvention of law risk per Exemption (b)(7)(E) of 5 U.S.C. § 552. Accordingly, a confirmation by the FBI that it has or does not have responsive records would be tantamount to acknowledging where the FBI is or is not applying investigative resources, thus disclosing the scope of its law enforcement techniques and procedures, capabilities, and/or vulnerabilities.

It is unnecessary to adjudicate your request for a fee waiver, as no fees are being assessed.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication excluded records do, or do not, exist.

For questions regarding our determinations, please contact the attorney for the Government. The FOIPA Request and Civil Action numbers listed above have been assigned to your request. Please use this number in all correspondence concerning your request.

Enclosed for your information is a copy of the FBI Fact Sheet and Explanation of Exemptions

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", followed by a stylized flourish or number "3".

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Information Management Division

Enclosure(s)